

INTEROFFICE MEMORANDUM



DATE: May 22, 2012

PHONE: (909) 387-6384

FAX: (909) 387-6444

FROM: **TERRY BROWN**
Deputy District Attorney
Central Division

TO: **DENNIS CHRISTY**
Assistant District Attorney

CLARK HANSEN III
Chief Deputy District Attorney
Central Division

SUBJECT: OFFICER INVOLVED DEATH

Involved Officers - Glen Alfaro, Daniel Futscher, and Ryan Pepler
(San Bernardino Sheriff's Department)

Deceased Subject - Tory Anthony Reed (DOB 07-04-1982) – Resident of
the City of Rialto

Date/Time of Incident - April 19, 2011; 1749 hours

Investigating Agency - San Bernardino Sheriff's Department

Case Agent - Detective Ryan Ford (San Bernardino Sheriff's Dept.)

DR# 601100062; H#2011-31

STAR# 2011-55554

PREAMBLE

The summary of this incident is drawn from reports prepared by the Colton Police Department and the San Bernardino County Sheriff's Department and submitted to this office by the case agent Detective Ryan Ford. The submission includes various narrative reports, which contain interviews of the involved-officers identified above, dispatch call logs, crime scene detail and diagrams, coroner investigation report and autopsy protocol with attached toxicology report, search warrant documentation, deceased subject's criminal background, and medical documents relating to the deceased subject's treatment.

FACTUAL SUMMARY

The incident resulting in Tory Anthony Reed's death ("Reed") occurred on April 19, 2011. It stemmed from Reed's commission of a double homicide in the city of Colton on April 17, 2011 and his subsequent actions taken to avoid being arrested or questioned in connection with the killings.

BACKGROUND: COLTON DOUBLE HOMICIDE

On Sunday April 17, 2011, at about 0433 hours, Colton Police officers were dispatched to 800 East Washington Street, apartment #271 in reference to shots fired. Upon arrival Colton officers located a deceased female, Victim #1, with a gunshot wound to the head and neck. Officers also discovered a male adult, Victim #2, suffering from a gunshot wound to the chest. Victim #2 died a short time later at Loma Linda University Medical Center. Several spent .380 shell casings were located at the crime scene by Colton officers.

After speaking with approximately four witnesses who had been inside the apartment in Colton at the time of the shooting, officers learned that Tory Anthony Reed arrived at the apartment smashed through the sliding glass window, entered the apartment and shot and killed his ex-girlfriend Victim #1 and her friend Victim #2.

As Colton Police Department investigated the double homicide they were contacted on April 18 and 19, 2011, by Witness #1. Witness #1 identified herself as one of Reed's ex-girlfriends and advised that Reed had contacted her after the killings and was currently staying at her godfather's house located at 4080 North F Street, Apt. G in San Bernardino. Witness #1 reported that she was in fear of Tory Reed and that he had committed violence against her in the past. Witness #1 further reported that Reed had told her he committed the murders in Colton and was not going to surrender because he did not want to go to jail for the rest of his life.

Tory Reed had also told Witness #1 he was willing to shoot it out with law enforcement or commit "suicide by cop" by simulating a weapon to avoid being arrested. Witness #1 described how Reed had specifically told her that if confronted by police, he wanted to be killed by them and would act like he was pulling a gun from his waist area to provoke the shooting. In further interviews, Witness #1 advised that Reed had told her he had thrown the murder weapon away after committing the crimes but refused to tell her where. Reed had asked Witness #1 to go on the run with him and was planning to go back east to be with his mother.

Witness #1's godfather was later identified as Witness #2. Witness #2 was interviewed by Colton police and denied any knowledge that Reed had been involved in a double homicide in Colton and denied seeing Reed with a weapon. He had allowed Reed to

stay at his apartment per Witness #1's request and had limited contact with Reed during the day he stayed at the apartment.

Witness #2's adult daughter, Witness #3, and her infant daughter, were also living at the apartment on North F Street. She later reported to Colton police that when Reed was brought to her apartment by Witness #1, she was advised that Reed was on the run from the cops and if the cops found him he would act like he had a gun. Witness #3 did not see Reed in possession of a handgun. Both Witness #2 and Witness #3 and her infant vacated the apartment prior to the SWAT arrival and subsequent shooting.

After confirming the location of the apartment and that Tory Reed was at the apartment alone, Colton Police contacted the San Bernardino Sheriff's personnel and requested assistance in apprehending Reed. At Colton's request, the Sheriff's Specialized Enforcement Detail was contacted and a Special Weapons and Tactics (SWAT) call was initiated. Colton detectives wrote a search warrant for the apartment and obtained a Penal Code 187 arrest warrant for Tory Reed.

SHOOTING OFFICER INTERVIEWS

DETECTIVE GLENN ALFARO

Detective Glenn Alfaro is employed with the San Bernardino County Sheriff's Department, Specialized Enforcement Division. On Tuesday, April 19, 2011, he received a call in the afternoon advising him of a SWAT call out. He was dressed in a green SWAT uniform with SBSD patches on the shoulders, cloth badge on the left chest, flag, nametag on the right chest and "Sheriff" on the back. He was wearing a ballistic helmet and safety goggles.

He was armed with a department issued Colt .223 caliber, M4 carbine with a magazine loaded with 28 rounds plus one in the chamber. He had a department issued Kimber 1911 .45 caliber pistol and a department issued 40mm less lethal weapon. At the time of his interview after the shooting Detective Alfaro was asked to download the M4 carbine rifle. He had a live cartridge in the chamber and five cartridges remaining inside the first magazine. The second magazine was loaded with thirty cartridges.

Alfaro and the other involved SWAT team members went to the rear of the Stater Brothers' parking lot on 40th and Kendall Drive for a briefing. They were advised that Tory Reed was the suspect in a double homicide in the city of Colton over the weekend. Alfaro and the team were informed that Reed shot and killed his ex-girlfriend and a male friend of hers in Colton on Sunday April 17, 2011 and that he fled the scene still armed and dangerous. Alfaro was advised that Reed was a former semi-professional football player and was possibly still armed with a .380 handgun. Colton detectives confirmed that Reed was at 4080 North F Street, Apt. #G in San Bernardino.

A plan was formulated to contact Reed at the apartment by SWAT team members and peacefully take him into custody. Alfaro was assigned specifically to the entry team. This team consisted of Alfaro and five other SWAT personnel including Sgt. Charboneau, Detective Futscher, Detective Garvin, Detective Pineda and Deputy Pepler . The entry team conducted evacuations of the neighboring apartments including "F" to the East and "H" to the West.

Members of the entry team were transported in the armored personnel carrier (APC) to within twenty feet of the front door of apartment "G". Announcements were made over a PA loudspeaker system for Reed to surrender. Detective Alfaro and Sgt. Charboneau took a position of cover to the right of the APC behind a parked vehicle in order for Alfaro to have a visual of the front door. Alfaro was to deploy the less lethal impact munition on Reed in order to incapacitate him if he had a clear shot. Charboneau provided lethal cover as Alfaro transitioned to the 40mm impact munition.

Alfaro and the other entry team members then took position near the garage area of apartment "G" with Alfaro in the first position. The tactical tractor or bearcat was then deployed and the mechanical arm and claw were used to remove the security door, front door, windows and blinds. Once the east windows and front doors were removed, the SWAT team members were able to look inside the apartment. More announcements were made over the PA system for Reed to surrender. Reed refused. SWAT team members noticed Reed hiding behind the hallway corner which was approximately twenty feet from the front door and window.

The entry team positioned themselves at the edge of the east window. Alfaro maintained the first position followed by Futscher and the other entry team members. Alfaro used the lower left corner of the window frame as cover as the team maneuvered their way behind him visually clearing the interior of the apartment. Alfaro saw Reed hiding behind the hallway corner and recognized him as the murder suspect who was possibly armed with a handgun. Reed's location was approximately twenty feet from the front door and window.

Futscher gave Reed several commands to show his hands and come out from behind the corner. Reed did not comply. Reed would temporarily peek out from behind the corner and show one hand at a time before retreating behind the corner. He did show both hands briefly on one instance. On another occasion, Reed brought his right hand down and placed it behind his waistband. Reed then completely hid behind the corner. Reed suddenly darted out from behind the corner and ran towards the front door and window where the deputies were positioned.

Alfaro observed Reed's right hand come up from behind his back in the front chest as he pointed a dark object in his hands towards the deputies. Alfaro immediately focused

the threat Reed's actions posed and took them as an attack on deputies. Alfaro fired a burst from his M4 rifle at Reed's upper chest area. Reed fell to the ground.

Alfaro looked inside the apartment and saw Reed lying on the ground facedown with his head facing the window and his right hand underneath his body and his left hand propped up attempting to push up. Reed continued to move, he was commanded to stay on the ground and place his hands behind his back. Reed did not comply and attempted to get up by pushing himself up with his left hand as his right hand was moving out from underneath his body.

Fearing Reed was armed and was attempting to re-engage deputies, Alfaro fired a second burst aiming at Reed's upper right shoulder area. At the same time Alfaro heard Deputy Pepler fire at Reed.

After Alfaro's second burst, Reed stayed on the ground and continued to move. Alfaro maintained lethal cover on Reed from the window as an entry team member using a ballistic shield entered the apartment followed by other team members. They pinned Reed to the ground and handcuffed him using zip-tie flex cuffs. Once the residence was secure medical aid was requested for Reed.

Alfaro has been a patrol Deputy, range and training officer and detective. In his training and experience he knows that handguns such as a .380 can be deadly. Alfaro thought of the LAPD officer who was shot in the head with a .380 handgun by a barricaded suspect as SWAT members entered the residence to take him into custody.

Alfaro felt fear just prior to the shooting. He could not believe Reed's actions and felt Reed was trying to shoot a weapon at him and other SWAT team members in an attempt to escape. Alfaro explained that the overall mission was to take Reed safely into custody, but at the time Reed charged him and the team, lethal force was the only option.

DETECTIVE DAN FUTSCHER

Detective Dan Futscher is employed with the San Bernardino County Sheriff's Department, Specialized Enforcement Division, Valley Gang Team. On Tuesday April 19, 2011, he was called out as part of the SWAT team. He was dressed in a green SWAT uniform with SBS patches on the shoulders, cloth badge on the left chest, flag, nametag on the right chest and "Sheriff" on the back. He was wearing a ballistic helmet and safety goggles.

He was armed with a department issued Colt .223 caliber, M4 carbine with a magazine loaded with 29 rounds plus one in the chamber. He also had a department issued Kimber 1911 .45 caliber pistol. At the time of his interview after the shooting, Detective

Futscher was asked to download his rifle. There were 15 cartridges remaining inside the first magazine and a live cartridge in the chamber. The second magazine contained 29 cartridges.

Before responding to the location where the suspect Reed was located, Futscher was briefed on the details of Tory Reed's commission of a double homicide in the city of Colton over the weekend, the fact that he was possibly armed with a .380 handgun and the plan to take him into custody. Futscher was assigned to the entry team and assembled with the rest of the SWAT team at the location where Reed was hiding.

After numerous announcements over the PA system and the subsequent removal of the security door, window and blinds of Apt. #G, the entry team positioned itself at the edge of the window in a "pie the corner tactic" in order to visually clear the interior of the residence. Reed was observed hiding behind the corner of the hallway at approximately twenty feet from the front door and window. Alfaro maintained first position followed by Futscher and other entry team members.

Futscher saw Reed hiding near the corner hallway to the right of the front room, he made eye contact with Reed, recognized him as the murder suspect and gave Reed several commands to show his hands and come out from behind the wall. Futscher was only able to see a quarter of Reed's upper body and one of his hands at a time. Reed would hold out one of his hands and then pull it back before putting out his other hand.

Futscher gave Reed additional commands to show both hands because at that point he could only see his left hand. Futscher said he heard Reed say something to the effect of "I am unarmed," and Futscher responded by telling Reed "That is fine but I need to see both hands to make sure you stay unarmed." Reed briefly showed his right hand but quickly brought the hand down and placed it behind his waistband as though he had a weapon and then he completely hid behind the corner.

Reed suddenly darted out from behind the corner and ran towards the front door and window at deputies. Reed's right hand came up from behind his back up in front of his chest as he pointed his hands towards deputies as if he was holding a handgun. Futscher immediately determined Reed's actions posed a threat and was engaging deputies. Futscher fired a burst from his M4 rifle at Reed's upper chest area as he moved back behind the window frame for cover. During this movement, Futscher fired a second burst and the rounds struck the drywall at the edge of the window frame. Futscher repositioned himself and fired a third burst in the area where he saw Reed charging. The incident occurred extremely quickly and Futscher estimated a fraction of a second or two between his bursts of automatic gunfire.

Futscher next looked inside the apartment and saw Reed lying on the ground with his head facing the front door. Alfaro maintained cover while Futscher moved from the

window to the front door area, while Reed was given commands to stay on the ground and place his hands behind his back. As Futscher repositioned himself towards the door, he heard Alfaro and Pepler simultaneously fire a burst at Reed.

The entry team used a ballistic shield to enter the apartment. They pinned Reed to the ground and handcuffed him. Futscher entered the apartment with the rest of the team in order to clear and secure the residence.

Futscher was surprised to see Reed charge at deputies just prior to the shooting. He could not believe Reed's actions and felt Reed was trying to shoot a weapon at Alfaro or other SWAT team members in an attempt to escape. At the time Reed charged him and the SWAT team members Futscher believed that lethal force was the only option.

DEPUTY RYAN PEPPLER

Deputy Ryan Pepler is employed with the San Bernardino County Sheriff's Department and assigned to the Specialized Investigation Detail, Valley Gang Team. On Tuesday April 19, 2011, he was called out as part of the SWAT team. He was dressed in a green SWAT uniform with subdued Sheriff's Department patches on the front, both sides and on the back. He was wearing a ballistic helmet and safety goggles.

He was armed with a department issued Colt .223 caliber, M4 carbine with a magazine loaded with 29 rounds plus one in the chamber. He also had a department issued Kimber 1911 .45 caliber handgun. At the time of his interview after the shooting, Deputy Pepler was asked to download his M4 rifle. There were 25 cartridges remaining inside the magazine and a live cartridge in the chamber.

Peppler was briefed on the details that Tory Reed was the suspect in a double homicide in the City of Colton which occurred one to two days prior. Pepler was informed that the weapon was believed to be a .380 handgun, that it had possibly been discarded after the murders but that was not confirmed. Reed was hiding out at an apartment on F Street in San Bernardino and had planned a possible escape route. Pepler and his team were assigned as the entry team.

The armored personnel carrier (APC) carried the entry team into position approximately twenty feet from the front door. Pepler went to the west of the APC and watched the front door of unit G while other SWAT members conducted evacuations of the neighboring apartments.

Multiple announcements were made on the PA system informing Reed he was surrounded, that they had a search warrant, that Reed was under arrest and that they were not leaving. Reed was advised to exit the apartment with his hands up. Pepler saw movement of the blinds of the north facing bedroom of apartment G. At one point

Peppler observed the front door to unit G open a small amount and Reed was advised to exit and then the door shut from the inside.

The security door, window and blinds were removed to create an area where the SWAT team members were able to look inside the apartment. As this was done Detective Alfaro, Detective Futscher and Peppler stood close to the north facing wall on the east side of the window, near the garage.

Peppler was able to see inside of apartment G through the broken window but it was dark inside. Peppler and other SWAT members used lights affixed to their rifles to illuminate the inside. Peppler saw Reed's left hand, however not his right. Reed was standing partially behind an interior hallway wall approximately ten to fifteen feet away. During the next minute, Peppler could see one of Reed's cheeks and Reed's nose for a short time, however Reed would show part of his body then move completely behind the hallway wall.

Futscher commanded Reed several times to show both of his hands. Futscher conversed with Reed for approximately one minute before Reed left the hallway and advanced towards Futscher, Alfaro and Peppler. Reed advanced towards Peppler with both of his hands at approximately chest level, extended away from his body and his feet consistent with a shooting position. Reed walked fast and looked directly at them. Based on Reed's aggressive movements, his noncompliance with SWAT commands, including not showing both hands, and his recent use of a handgun to commit a double homicide, Peppler interpreted Reed's actions as a threat and feared Reed was immediately going to shoot them.

As Reed advanced Peppler heard automatic gunfire and knew from the direction of the shots that the shooter was Futscher or Alfaro. Peppler then heard what sounded like two rounds being fired from a handgun. Peppler knew that his SWAT partners were all armed with rifles and therefore believed that he, Alfaro and Futscher were being shot at by Reed with a handgun. In response, Peppler retreated approximately three to four feet back and to his left to give himself more room, to get a little more cover and to position himself to shoot.

Peppler looked at Futscher and Alfaro and noticed they were standing and appeared to be uninjured. Peppler moved to the east side of the front door, looked inside the apartment and saw Reed lying on his belly approximately five to six feet away on the living room floor with his right arm underneath him, his head pointed towards the door and Reed was using his left hand to push himself up off of the ground.

Peppler feared Reed had a gun and was attempting to move his body to shoot him. Several SWAT team members gave commands to Reed to get down on the ground and

to show his hands but Reed did not comply. As Reed continued to push himself up, Pepler could not see Reed's right hand and feared he and the other SWAT members were about to be fired on so he fired an approximate three round burst from his M4 and believes the bullets struck Reed on the top of his head.

After Pepler shot, Reed laid back down on the ground. A shield was called for and Pepler and the other team members entered the apartment and Reed was handcuffed and the apartment secured.

SWAT TEAM MEMBER WITNESS STATEMENTS

SERGEANT PAUL WYNN

Sergeant Wynn of the San Bernardino Sheriff's Specialized Enforcement Detail was contacted on Tuesday, April 19, 2011, at approximately 2:30 p.m. to assist in the apprehension of Tory Reed. Wynn met in San Bernardino with Colton Police detectives, a sergeant from the San Bernardino Police Department and a state parole agent and received details of the double homicide committed by Tory Reed in the city of Colton two days earlier. Wynn was advised that Reed had told his ex-girlfriend that after committing the murders he had dumped the gun. Wynn was further advised that if confronted by police, Reed was going to simulate a weapon and commit suicide by cop.

It was decided the Specialized Enforcement Detail would respond and it was now deemed a SWAT call. A plan of action was devised and a command post was established at the southwest corner of West 40th street and North F Street.

The SWAT team worked with Witness #1 to make sure the apartment was cleared of all persons except for Reed. Wynn's team maintained surveillance on the apartment to ensure that Reed did not leave.

Wynn was assigned to ride in the Armored Personnel Carrier (APC). Wynn is a hostage negotiator for San Bernardino Sheriff's department and was going to communicate with Reed via the PA system. The APC was driven directly in front of the 4080 North F Street #G. Once all nearby residents were evacuated, all personnel were in place, Wynn began to make his PA announcements. Wynn identified Reed by name, the address they intended searching, the fact that they had a search warrant and that Reed was under arrest. These announcements were made for about 20 minutes.

Wynn observed Reed open the inner entry door about three times, and Wynn could see Reed's body in the doorway. The last time Reed opened the inner entry door, Wynn

could see Reed's head. Wynn made additional announcements, "Come out, we know you're in there." Reed failed to comply with the orders provided by Wynn.

It was decided at that time to use the Tac Cat to remove the security screen door, inner door and both north facing windows in order to remove all visual obstructions so that all members of the specialized enforcement detail could see into the apartment. Once that was completed, this allowed sheriff's personnel to move closer to the large window and get a better view of Reed.

Wynn observed approximately six to eight personnel at the large window and heard them ordering Reed to show his hands. Wynn looked into the interior of the apartment and could see a small portion of the hallway on the west side of the apartment. Wynn observed Reed produce one of his hands, pull it back then produce his other hand. Reed would only show parts of his body and refused numerous commands to come out with his hands up.

Wynn next observed Reed quickly turn and face towards the entry team near the large window. Reed lowered his center of gravity, put both hands together and acted as if he had a weapon. Reed's movement towards the team was quick and Wynn thought Reed had a weapon in his hands. Once Reed entered the room in a shooting position with his hands in front of him, Wynn heard and observed automatic gunfire. After the first volley of gunfire, Reed went down and there was smoke and dust in the air. Two members of the team moved closer to the doorway and then Wynn heard a second, shorter volley of gunfire.

SERGEANT TIM O'CONNELL

Sergeant O'Connell is assigned to the Specialized Enforcement Detail of the San Bernardino County Sheriff's Department. On April 19, 2011, O'Connell was also advised of the incident involving Tory Reed. O'Connell was briefed on the fact that Reed had admitted to committing the double homicide and had advised his ex-girlfriend, Witness #1 that he was not going to go to prison. Reed was willing to shoot it out with the cops or commit suicide by cop.

After arriving at the location of 4080 North F Street, at approximately 1705 hours, O'Connell drove the APC directly in front of the apartment. Sergeant Wynn was next to O'Connell in the front passenger seat and he was instructed to give knock and notice and give appropriate commands using the PA system.

At approximately 1725 hours, Wynn began making the PA announcements. During this time period, O'Connell noticed the security screen open about six to eight inches. O'Connell then noticed inner entry door open and shut two to three times. O'Connell

observed Reed's bald head in the doorway. At one point, Reed opened the front door and yelled, "I didn't do anything," and then immediately closed and locked the door.

Once verbal commands and negotiations failed the Tack Cat (armored vehicle) was used to remove the security screen door, inner entry door and break out both north facing windows. Once these were cleared, O'Connell activated the flood lights on the APC, in order to illuminate the interior of the apartment.

O'Connell looked inside the apartment and observed movement near the L shaped hallway and saw Reed's head, part of his shoulder, arm and hand. Reed suddenly burst around the corner and charged at the entry team with his hands together, his arms out and it appeared that he had a weapon in his hands. Reed's hands were pointed in the direction of the entry team. O'Connell heard two distinct gunshots, followed by subsequent automatic M-4 gunfire. O'Connell observed and heard about three bursts of M-4 gunfire from multiple weapons. The gunfire was over quickly and Reed went down in the living room of the apartment.

SERGEANT JOHN CHARBONEAU

Sergeant John Charboneau is assigned to the valley gang team and also assigned to SWAT. On April 19, 2011, Charboneau was advised that the SWAT team had been requested to respond to the location in San Bernardino and he was also briefed on the situation involving Tory Reed and the fact he might desire suicide by cop.

After the evacuations of the apartment, multiple PA system announcements and the removal and clearing of the windows and doors with the bearcat, Charboneau and several of his team members moved to the east side of the cleared out window. He described the line of SWAT members behind the broken window as: Alfaro, Futscher, Garvin, Peppler, himself and Pineda.

From the east side of the window, Charboneau saw portions of Reed's body inside the apartment. Reed partially concealed himself behind an interior hallway wall. Charboneau heard team members give verbal commands to Reed such as "Show me your hands" and "You're under arrest." Reed briefly showed one of his hands then pulled back. As Charboneau moved behind the bearcat several shots rang out. Charboneau turned towards the apartment and briefly saw Reed standing in the living room, he did not notice Reed's hands as this happened quickly. Charboneau immediately dropped the 40mm grenade launcher and removed his handgun from his holster.

Charboneau moved to the front door frame and Peppler joined him. Charboneau looked inside of apartment G and saw Reed lying on the ground with his head facing the door and his right hand under his body. Charboneau could not see Reed's left

hand. Reed tried to get up as his right arm remained underneath his body. Peppler immediately shot an approximate three round burst and Futscher or Alfaro shot at the same time. Charboneau also made the decision to shoot, however Peppler shot first.

Charboneau was surprised Reed was getting up and feared Reed wanted to continue to fight. He estimated the initial shooting lasted three to six seconds followed by a six to fifteen second period of no shooting then a one to two second period of shooting. After being shot, Reed continued to move and Charboneau called for a shield. SWAT members warned each other that they could not see Reed's hand and feared he was holding a gun. One of the SWAT team members entered the apartment and pinned Reed down to the floor using the shield.

DETECTIVE DANIPAUL PINEDA

Detective Danipaul Pineda is assigned to the Sheriff's Specialized Enforcement Division and witnessed the shooting of Tory Reed. Pineda was part of the entry team as well. After numerous announcements with no compliance from Reed the tactical tractor "ported" the living room window. Pineda was assigned to the number one position and held a shield to cover the team. Pineda was at the window and held the shield up to cover Alfaro, Futscher and himself. Reed showed himself and Futscher gave Reed verbal commands.

Pineda looked toward Reed but was only able to see Reed's hands because of his position. Reed's hands were moving up and down and he was not following the commands. The commands were, "Come out, let me see your hands, come out." Reed was standing in the hallway using the wall as cover. Reed would hold his hands out and then take them back behind the wall and out of their view. The SWAT team could not see behind the wall where Reed was standing to see if he had weapons.

Pineda moved back and went to go around the back of the tractor and flank to the right with Detective Garvin and another deputy to obtain a better position. As they started to move Pineda heard gunfire. He believed Reed was firing outside at them. Pineda ducked down and released the shield. He continued around the tractor and went to front door to flank Reed. He saw Reed down on the ground in the apartment and entered and approached Reed. Reed was lying face down with his hands under his chest area and one hand angled against the ground.

Pineda slung his M4 and pulled out his flex cuffs to take Reed into custody. He started to walk forward and Reed pushed himself off the floor by bending backwards and raising his upper body. Reed brought his hands together and thrust them forward toward the SWAT members. Reed's movement was consistent with presenting a firearm from a prone shooting position. Someone fired to the right of Pineda, Reed was

struck by the additional gunfire and slumped back to the ground but continued to move. Pineda moved up to Reed and placed the cuffs onto him.

ADDITIONAL SWAT TEAM INTERVIEWS

Detective John Bannes, Detective David Frayeh, Detective Eno Lassiter, Detective Derrick Garvin, Deputy Jose Ruiz and Deputy Farris Short are assigned to the San Bernardino Sheriff's Department Specialized Enforcement Detail and were called out on April 19, 2011. These team members were subsequently interviewed regarding their observations.

Each of these officers similarly observed the situation unfold with Reed refusing to follow orders or show both hands and then suddenly darting into the front room towards the entry team with both hands together in a shooting position. These team members believed that Reed was armed and going to shoot one of the team.

Frayeh and Bannes noted that as Reed quickly darted into the front room towards Charbonneau's team they heard one gunshot and Bannes thought he heard a second shot possibly coming from inside the apartment.

CRIME SCENE

After the shooting incident members of the Sheriff's Homicide team and Sheriff's crime lab conducted a walk through and investigation of the crime scene. Forty-three fired .223 caliber cartridge cases were located in the dirt lot and dirt planter areas between the SWAT vehicles and Apartment G. The suspect was located lying on the living room floor, about eight feet southeast of the front door. The body was prone, the head turned to the left, and the hands were cuffed at the back using a black plastic cuff. The head was to the north and the feet were to the south.

There were multiple bullet holes located in the west living room wall, hallway and southwest bedroom of the residence. All bullet holes were documented and photographed. In addition trajectory rods were placed in the holes, where possible, to show direction of travel for individual bullets.

The bullet holes and strikes were consistent with deputies' statements regarding locations of the shooting deputies located at the northeast corner of the residence exterior, shooting towards a southwest direction. In addition the number of rounds fired was consistent with the remaining cartridges in the three shooting officers Colt .223 caliber, M4 carbines.

Sheriff's Detectives from the Homicide Detail searched the crime scene but did not locate a handgun. Investigators did locate a pair of black sunglasses and a long

cylindrical vacuum cleaner attachment near Reed's body, but it could not be determined whether Reed had any of the items in his hands at or near the time he was shot.

MEDICAL TREATMENT AND AUTOPSY PROTOCOL

On April 21, 2011, an autopsy was performed on the body of Tory Anthony Reed (D.O.B. 07-04-1982) by M. Scott McCormick, M.D. a pathologist at the Riverside County Sheriff Coroner's office. The body of Reed was approximately 6'1" and 178 pounds. Dr. McCormick determined that there were ten gunshot wounds to the body.

Gunshot Wound to Head

The entrance wound is located one inch below the top of the head and one and one half inches left of the midline. The entrance wound consists of a six millimeter semicircular defect with a five millimeter wide crescentic collar of abrasion from ten o'clock to one o'clock. The adjacent skin has no soot, stippling or muzzle stamp.

The wound path extends through the skin, skull and muscle of the scalp consisting of a nine centimeter long laceration of the scalp and underlying muscle gaping up to five centimeters. The wound path penetrates the skull with associated fractures of the skull but does not enter the skull cavity itself.

The end of the wound path is just above and behind the upper attachment of the left ear approximately four inches below the top of the head. The direction of the wound path is downward and slightly front to back. Associated findings include diffuse area of subgaleal hemorrhage as well as fractures of the left temporal and parietal bones of the skull as well as fractures of the left orbital plate. Secondary projectiles consisting of fractured skull bone are found in the left parietal and temporal lobes of the brain as well as left basal ganglia.

Gunshot Wound to Neck

Entrance wound is located on right side of the neck and is a complex wound originating approximately seven inches below the top of the head and two and one-half inches right of the midline. From the point of origin there is a somewhat triangular five by two centimeter area of red and brown cutaneous abrasion.

Gunshot penetrated skin and muscle only. The direction of the wound path with respect to standard anatomic position is right to left. Fragments of lead, copper

jacketing, white granular material and black cloth fibers were recovered from the wound.

Gunshot Wounds to Left Shoulder

Five closely grouped entrance wounds with intersecting wound paths on the posterior aspect of the right shoulder. The most medial and superior wound is eleven inches below the top of the head and four and one half inches left of the midline. The entrance wound consists of a five millimeter circular skin defect. The adjacent skin has no soot, stippling or muzzle stamp.

The next most medial and superior gunshot wound is located twelve inches below the top of the head and six inches left of the midline. The entrance wound consists of a five millimeter circular skin defect with a crescentic abrasion from ten o'clock to five o'clock. The adjacent skin has no soot, stippling or muzzle stamp.

The next entrance wound is located twelve and one half inches below the top of the head and seven inches left of midline. Entrance wound consists of a five millimeter circular skin defect with a two millimeter wide circumferential collar abrasion. The next entrance wound is located twelve and one half inches below the top of the head and seven and one half inches left of midline. The last entrance wound is located sixteen inches below the top of the head and seven inches left of the midline.

The wound paths are close together and intersecting such that it is impossible to determine the individual wound paths. The wound paths pass through the skin and muscle of shoulder, through the left scapula, through the muscles between the scapula and left side of ribcage. Wound paths also perforate and fracture the left ribs two through six. The wound paths perforate the posterior aspect of the left lung and two of the wound paths perforate the stomach. Multiple fragments of lead and copper jacketing recovered from along the wound paths.

The overall direction of the wound paths collectively is downward, slightly left to right, and slightly back to front.

Gunshot Wound to Left Arm

The entrance wound is located on the posteromedial aspect of the left upper arm five inches below the top of shoulder. Entrance wound consists of a twenty by seven millimeter vertically oriented oval defect with a circumstantial abrasion collar ranging in width from one millimeter up to nine millimeters at twelve o'clock. Just below the entrance wound is another small secondary entrance wound consisting of a 4 millimeter circular skin defect with an abrasion collar ranging in width from one millimeter to 4

millimeters. Surrounding the entrance wounds are several small linear abrasions consistent with shrapnel or pseudostippling.

The wound passes through the skin and muscle of the left upper arm and exits the skin of the arm just above the elbow. The exit wound consists of a seventeen millimeter slit-like defect with no persistent tissue defect and no soot, stippling or muzzle stamp. The direction of the wound path is downward and slightly right to left.

Gunshot Wound to Chest

The entrance wound is located on the left side of the chest seventeen and one half inches below the top of the head and two and one fourth inches left of the midline. The entrance wound consists of a five millimeter circular skin defect with a one millimeter wide circumferential collar of abrasion. The adjacent skin has no soot, stippling or muzzle stamp.

The wound passes through the skin and muscle of the chest, through the left third intercostal space anteriorly, through the right ventricle of the heart, through the base of the aorta, through the left atrium of the heart, through the hilum of the left lung, through the left seventh intercostal space posteriorly, through the muscle of the back into the subcutaneous tissue of the back. A small, moderately deformed copper jacketed bullet was recovered from the end of the wound path.

The direction of the wound path with respect to standard anatomic position is front to back and slightly upward with no discernible right to left deviation.

Gunshot Wound to Right Shoulder

The entrance wound is located on the posterior aspect of the right shoulder ten and one half inches below the top of the head and seven and one half inches right of midline. The entrance wound consists of a five millimeter circular skin defect with an abrasion collar ranging in width from two millimeters up to four millimeters at six o'clock. The adjacent skin has no soot, stippling or muzzle stamp.

The wound path passes through the skin and muscle of the shoulder, through the scapula, through the muscle again and exits the skin on the anterior of the right shoulder. The exit wound is located on the anterior aspect of the right shoulder twelve inches below the top of the head and six inches right of midline. The exit wound consists of an irregular thirty-five by twenty millimeter tear in the skin.

CAUSE OF DEATH

Multiple gunshot wounds.

TOXICOLOGY REPORT

A toxicology report was completed as part of the autopsy. Samples of femora blood, urine, and vitreous fluid were collected as well as samples from brain, liver and gastric samples. Cannabinoids were detected in all samples. In addition the following levels were noted from the femoral blood sample: Delta-9-THC, LC/MS/MS results were 0.0283 mg/L; 11-hydroxy-Delta-9-THC, LC/MS/MS results were 0.0023 mg/L; 11-Carboxy-Delta-9-THC, LC/MS/MS results were 0.067 mg/L

REED'S CRIMINAL CONVICTIONS

1. Vehicle Code section 14601.1(A) Driving while license suspended as a misdemeanor in 2002 – 3 years probation and 60 days jail.
2. Penal Code section 242 battery as misdemeanor in 2002 – 36 months probation.
3. Penal Code section 594 (A) Vandalism as a misdemeanor in 2003 – 24 months in probation.
4. Penal Code section 273.5 (a) Infliction of Corporal Injury on Spouse as misdemeanor in 2006 – 36 months probation and 90 days jail.

RELEVANT LEGAL PRINCIPALS

Penal Code section 69: Resisting or Deterring Officer

Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed on such officer by law, or who knowingly resists, by the use-of-force or violence, such officer, in the performance of his duty is punishable [as a felony or misdemeanor].

Penal Code section 148(a)(1): Resisting or Obstructing a Peace Officer

Every person who willfully resists, delays, or obstructs a . . . peace officer . . . in the discharge or attempt to discharge any duty of his or her office . . . shall be punished [as a misdemeanor].

Penal Code section 187(a): Murder

Murder is the unlawful killing of a human being, or a fetus, with malice aforethought

Penal Code section 240: Assault

An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Penal Code section 245(c): Assault w/ Force Likely to Produce GBI against Officer

Any person who commits an assault with a deadly weapon . . .or by any means likely to produce great bodily injury upon the person of a peace officer . . . shall be punished by imprisonment in the state prison for three, four, or five years.

Penal Code section 834a: Duty to Refrain From Resisting Arrest

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

Penal Code section 835: Restraint Limited to Necessity

. . . . The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

Penal Code section 835a: Use of Reasonable Force to Effect Arrest

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance. [¶] A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of resistance of threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code section 836(a): Peace Officer's Authority to Arrest

A peace officer may arrest a person in obedience to a warrant, or . . . without a warrant, may arrest a person whenever any of the following circumstances occur: (1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. (2) The person arrested has committed a felony, although not in the officer's presence. (3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

CALCRIM 3470: Self-Defense or Defense of Others (Excerpts)

The defendant acted in lawful self-defense or defense of others if: (1) The defendant reasonably believed that he or another person was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully; (2) the defendant reasonably believed that the immediate use-of-force was necessary to defend against that danger; and (3) the defendant used no more force than was reasonably necessary to defend against that danger. [¶] If the defendant's beliefs were reasonable, the danger does not need to have actually existed. [¶] The defendant's belief that he or someone else was threatened may be reasonable even if he relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true. [¶] A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably

necessary, to pursue an assailant until the danger of bodily injury has passed. This is so even if safety could have been achieved by retreating.

Police Power to Detain Individual:

An officer has the right to temporarily detain a person when the officer has a reasonable suspicion of that person's involvement in criminal activity. Reasonable suspicion demands some minimum level of objective justification, but considerably less than is required for probable cause to arrest. (*United States v. Sokolow* (1989) 490 U.S. 1, 7; *Terry v. Ohio* (1968) 392 U.S. 1, 22.)

Whether reasonable suspicion exists depends upon a consideration of the totality of circumstances. (*United States v. Sokolow, supra*, 490 U.S. at pp. 8-9; see also, *United States v. Arvizu* (2002) 534 U.S. 266, 277-278.) It is immaterial that there might be a possible innocent explanation for the activity witnessed by the police officer. Even innocent behavior will frequently provide a showing of reasonable cause to detain. (*United States v. Sokolow, supra*, 490 U.S. at pp. 9-10.)

One function of a temporary detention is to resolve any ambiguity in the situation to find out whether the activity was in fact legal or illegal. (*People v. Souza* (1994) 9 Cal.4th 224, 242.) A detention is intended " 'to permit a speedy, focused investigation to confirm or dispel [the] individualized suspicion of criminal activity' " justifying it. (*People v. Soun* (1995) 34 Cal.App.4th 1499, 1516.) Indeed, an officer would be derelict in his duty if he did not investigate any suspicious circumstances confronting him. (See *People v. Higgins* (1994) 26 Cal.App.4th 247, 250.)

Police Use-of-Force to Detain:

An officer attempting to enforce a lawful detention or arrest may use an amount of force that is reasonably necessary. (*People v. Brown* (1985) 169 Cal.App.3d 159, 167.) The right to verify or dispel suspicion is meaningless unless officers may, when necessary, forcibly detain a suspect. (*People v. Johnson* (1991) 231 Cal.App.3d 1, 12.) "Levels of force and intrusion in an 'investigatory stop' may be legitimately escalated to meet supervening events, such as attempted flight. . . . [¶] A 'reasonable' reaction in this context, like 'probable cause,' turns on 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' " (*Id.* at 13, citing *United States v. White* (D.C. Cir. 1981) 648 F.2d 29, 40.)

Even if a detention is unjustified (thereby unlawful), every person has a duty to submit to the orders of a peace officer and may not resist unless excessive force is used or threatened. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332 ["Our conclusion is dictated by a pragmatic realization that the rule allowing forcible resistance leads to riots and violence by fostering a belief on the part of the detained person that he is the sole judge of whether the detention is or is not proper. (Cf. *People v. Burns, supra*, 198 Cal.App.2d Supp. at p. 841.)"])

Use of Deadly Force:

When the person using said force does so in the honest and reasonable belief that there is imminent danger that the other person will kill him or another person or cause him or another person great bodily injury and that use of force is necessary to prevent death or great bodily injury to himself or such other person. (Penal Code Section 197)

ANALYSIS

Tory Anthony Reed's commission of a double homicide in the city of Colton on April 17, 2011, and his subsequent actions to avoid arrest or questions in connection with the killings resulted in his death on Tuesday, April 19, 2011. The question is whether the several officers' actions – which were part of the events leading up to death – were lawful and justified.

An officer's conduct cannot be judged in hindsight. Whether an action is reasonable is judged on the information available at the moment the action is taken. Reed's death was unfortunate. However, each involved officer acted reasonably and within their lawful authority as peace officers.

On Tuesday, April 19, 2011, Detective Glen Alfaro, Detective Dan Futscher and Deputy Ryan Peppler along with multiple other members of the San Bernardino Sheriff's Specialized Enforcement Detail were acting in the lawful performance of their duties as they attempted to serve a search warrant and arrest a dangerous and potentially armed murder suspect. Prior to going to the location, SWAT members had been briefed on the fact that Reed had shot and killed two people in Colton using a .380 handgun that had not been recovered. Reed had communicated that he was not going to surrender and was willing to shoot it out with police or commit suicide by cop by simulating a weapon.

These SWAT team members were dressed in full uniform and using clearly marked law enforcement vehicles when they went to the apartment where Reed was hiding. They made numerous announcements over a loud speaker of their presence and their intention of arresting the suspect and searching the apartment. Reed was given numerous opportunities to surrender and comply with their lawful requests. He refused.

Once SWAT team members had cleared the apartment doors and windows and had a visual on Reed, he was given more opportunities to surrender and he was given several commands to show his hands and come out from behind the corner. Reed did not comply. Reed would temporarily peek out from behind the corner and briefly show one hand or the other before retreating behind the corner. On one of those occasions,

Reed brought his right hand down and placed it behind his waistband. This conduct was consistent with officers' reasonable belief that he was armed and posed a threat.

Reed suddenly rushed out from behind the corner and rapidly moved towards the front door and window where the deputies were positioned with his hands together and his arms outstretched as if he were pointing and firing a handgun at the officers. That conduct is a violation of penal code 245(c) assault with a weapon or force likely on a peace officer. All sheriffs' personnel that were present, including the three shooting officers, immediately took Reed's actions as a threat. All the officers believed that Reed was armed with a handgun and was about to fire or had already begun firing at Deputies.

As Reed charged from behind the wall, Detective Alfaro observed Reed's right hand come up from behind his back to the front of his chest as he pointed what appeared to be a dark object in his hands towards the deputies and immediately perceived an attack on the deputies and fired.

At the same time, Detective Futscher determined Reed's actions posed a threat and was engaging deputies. He immediately fired a burst from his M4 rifle at Reed's upper chest area as he moved back behind the window frame for cover. Deputy Peppler believed he, Futscher and Alfaro were being shot at and immediately moved a few feet for cover and a better position to shoot.

After the initial discharge by Futscher and Alfaro, Reed went down to the ground but continued moving. He still refused to comply with demands to stay down and show his hands. Reed attempted to get up by pushing himself up with his left hand as his right hand was moving out from underneath his body.

The officers reasonably feared Reed was still armed and was attempting to re-engage deputies. Deputy Peppler thought Reed was still armed and attempting to move his body to shoot at the deputies and immediately fired a three round burst at Reed. Detective Alfaro fired at the same time as Peppler. He believed Reed was moving his right hand out from underneath his body to shoot at him and the other deputies. Sergeant Charboneau also observed Reed's actions and made the decision to shoot but both Peppler and Alfaro shot first so Charboneau did not have to shoot. Detective Pineda also observed Reed pushing himself off the floor by bending backwards and raising his upper body. Pineda also described Reed bringing his hands together and thrusting them forward toward the SWAT members in a manner consistent with presenting a firearm from a prone shooting position.

Here, each of these trained officers upon observing the conduct of Reed when he charged them from behind the wall and his subsequent movements and actions seconds later from the ground believed, in both instances, that he threatened them with

imminent bodily injury or death and that the use of immediate deadly force was necessary to defend against the danger.

It is settled law, that even when someone is confronted with only the *appearance* of danger he is justified in using deadly self-defense if that apparent danger would arouse in the mind of a reasonable person an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation, and knowing the same facts, would be justified in believing himself in like danger. Here, the fact that the subsequent investigation revealed that Reed only simulated a firearm at the time of the shooting, does not change the officers' reasonable conclusions that at the moment of his aggressive advance he was armed and threatened them with imminent bodily injury or death.

CONCLUSION

Under the facts, circumstances, and applicable law in this matter, Detectives Glen Alfaro, Dan Futscher and Deputy Ryan Peppler's use of deadly force was in response to an apparent and immediate threat of great bodily injury or death to themselves and other SWAT members at the scene. Their conduct is therefore justifiable in the defense of themselves and others and no criminal liability should attach to him.

Terry Brown
Deputy District Attorney
Central Division

Date

Clark Hansen III
Chief Deputy District Attorney
Central Division

Date

Dennis Christy
Assistant District Attorney
For Criminal Operations

Date